



RECEIVED
SEP 26 2019
DEQ SWRO

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE
355-A Deadmore Street, Abingdon, Virginia 24210
(276) 676-4800 FAX (276) 676-4899
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Jeffrey Hurst
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
POWERSCREEN MID-ATLANTIC, INC.
Registration No. 52792**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, and - 1316, between the State Air Pollution Control Board and Powerscreen Mid-Atlantic, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. “Facility” means the portable Powerscreen Premiertrak 400X crusher unit, currently leased to and operated by Wellmore Energy, at Convict Hollow Surface Mine, near Harman, Buchanan County, Virginia.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
7. "PCE" means partial compliance evaluation by DEQ staff.
8. "Powerscreen Mid-Atlantic, Inc." means Powerscreen Mid-Atlantic, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Powerscreen Mid-Atlantic, Inc. is a 'person' within the meaning of Va. Code § 10.1-1300.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution", means 9 VAC 5 chapters 10 through 80.
10. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Facts and Conclusions of Law

1. Powerscreen Mid-Atlantic, Inc. owns a Powerscreen Premiertrak 400X crusher unit (Facility) which is currently leased to Wellmore Energy, and operated at the Convict Hollow Surface Mine, near Harman, Buchanan County, Virginia.
2. On August 7, 2019, DEQ staff performed a Partial Compliance Evaluation (PCE) at the Convict Hollow Surface Mine. The PCE documented the Facility had been in operation since mid May 2019 without being evaluated for a permit. The Facility was being operated without emission controls during the PCE and Wellmore Energy staff confirmed the Facility had operated since mid May 2019 without emission controls.
3. On August 14, 2019, DEQ sent a letter to Powerscreen Mid-Atlantic, Inc., verifying coverage and authorizing operation under the Virginia Nonmetallic Mineral Processing General Permit.
4. 9 VAC 5-80-1120 (A) states, "No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this

article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.”

5. 9 VAC 5-510-190 (C) states, “Fugitive dust emissions controls shall include the following or equivalent as a minimum: 1. Fugitive dust emissions from drills, stockpiles, material handling, screens, crushers, load-outs, and traffic areas shall be controlled by wet suppression or equivalent...”
6. On August 28, 2019, based on the August 7, 2019 PCE, the Department issued a Notice of Violation No. ASWRO001293 to Powerscreen Mid-Atlantic, Inc. for the alleged violation described in paragraph C(2) above.
7. On August 29, 2019, the Department received an electronic response to the NOV from representatives of the Facility.
8. Based on the results of the August 7, 2019 PCE and the August 29, 2019 electronic response, the Board concludes that Powerscreen Mid-Atlantic, Inc. has violated 9 VAC 5-80-1120 (A) and 9 VAC 5-510-190 (C) as described in paragraph C(2) through C(4).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and - 1316, the Board orders Powerscreen Mid-Atlantic, Inc. and Powerscreen Mid-Atlantic, Inc. agrees to:

Pay a civil charge of \$9,100 within 30 days of the effective date of the Order in settlement of the violation cited in this Order.

Each payment shall be made by check, certified check, money order or cashier's check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Powerscreen Mid-Atlantic, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Powerscreen Mid-Atlantic, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Powerscreen Mid-Atlantic, Inc. for good cause shown by Powerscreen Mid-Atlantic, Inc. , or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order and NOV No.ASWRO001293 dated August 28, 2019. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Powerscreen Mid-Atlantic, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Powerscreen Mid-Atlantic, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Powerscreen Mid-Atlantic, Inc. declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Powerscreen Mid-Atlantic, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Powerscreen Mid-Atlantic, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Powerscreen Mid-Atlantic, Inc. shall demonstrate

that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Powerscreen Mid-Atlantic, Inc. shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which the parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

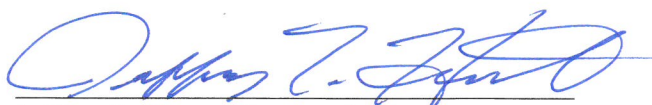
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Powerscreen Mid-Atlantic, Inc.. Nevertheless, Powerscreen Mid-Atlantic, Inc. agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Powerscreen Mid-Atlantic, Inc. has completed all of the requirements of the Order.
 - b. Powerscreen Mid-Atlantic, Inc. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Powerscreen Mid-Atlantic, Inc..

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Powerscreen Mid-Atlantic, Inc. from its obligation to comply

with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Powerscreen Mid-Atlantic, Inc. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Powerscreen Mid-Atlantic, Inc. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Powerscreen Mid-Atlantic, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Powerscreen Mid-Atlantic, Inc.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Powerscreen Mid-Atlantic, Inc. voluntarily agrees to the issuance of this Order.

And it is ORDERED this 26th day of September, 2019



Jeffrey L. Hurst - Regional Director
Department of Environmental Quality

Powerscreen Mid-Atlantic, Inc. voluntarily agrees to the issuance of this Order.

Date: 9/23/19 By: Christopher Stanley
Christopher Stanley, Chief Financial Officer
Powerscreen Mid-Atlantic, Inc.

State of North Carolina

City/County of Forsyth

The foregoing document was signed and acknowledged before me this 23rd day of
September, 2019 by Christopher Stanley who is
Chief Financial Officer of Powerscreen Mid-Atlantic, Inc., on behalf of
the company.

E. W. Roberts
Notary Public

52792
Registration No.

My commission expires: 09/10/24

Notary Seal:

09/10/24